HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: **HON'BLE SHRI H. L. DATTU, C.J. &**
HON'BLE SHRI D.R.DESHMUKH, J.

WRIT PETITION NO. 5787 OF 2000

PETITIONERS	:	1.	State of Madhya Pradesh through Secretary, Department of Home Affairs, Bhopal.
	:	2.	D.I.G. of Police, Raipur Dn. Raipur.
	:	3.	Superintendent of Police, Durg.
			-Versus-
RESPONDENTS	:	1.	Smt. Lilawati Devi, W/o Late Satya Prakash Sahi.
	:	2.	Ranjit Sahi.
	:	3.	Goutam Sahi.
	:	4.	Vishal Sahi.
	:	5.	Vivek Sahi.
	:	6.	Madhu Sahi.
	:	7.	Shivaji Sahi.
	:	8.	Badal Sahi.
	:	9.	Ku. Amita Sahi.
	:	10.	Neeraj Sahi.
			(All applicants are legal representatives of deceased applicant Sathya Prakash Sahi, Qr.No.15/B, Avenue-C, Sector-I, Bhilai)

Present:
Shri Sanjay S. Agrawal, G.A. for the petitioners/State.
Shri M. K. Baeg, Counsel for the respondents.

ORAL ORDER

(Passed on 04.04.2007)

The following oral order of the Court was passed by **H.L.Dattu, C.J.**

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This Writ Petition was filed under Article-226/227 of the Constitution of India questioning the legality or otherwise of the order passed by the Madhya Pradesh State Administrative Tribunal ('the Tribunal' for short) in O.A.No.456/1989 dated 07-03-2000.

2. By the impugned order, the Tribunal has granted certain reliefs to the deceased employee and his family members.

3. Late Satya Prakash was appointed as a Police Constable on probation for a period of 2 years by the respondents in the month of May 1984. While working as probationer, he was served with the charge memo dated 23-05-1985 *inter alia* alleging certain acts of omissions and commissions said to have been committed by him. After receipt of the charge memo, he filed his reply on 27-05-1985. The Superintendent of Police who was the disciplinary authority, without appointing any enquiry officer to enquire into the allegations levelled in the charge memo, had proceeded to pass an order exercising his powers under Regulation-59 of the Madhya Pradesh Police Regulations (in short "the Regulations"). Aggrieved by the said order passed by the Superintendent of Police, Satya Prakash, when he was alive, had filed O.A. No.456/1989 before the Tribunal.

4. During pendency of the application, Satya Prakash expired: With the permission of the Tribunal, his legal representatives have come on record and prosecuted the Original Application filed by late Satya Prakash. The Tribunal after detailed consideration of the facts pleaded by the parties to the *lis* and after referring to Regulation-59 of the Regulations has come to the conclusion that the order passed by the Superintendent of Police discharging the services of a probationer, is contrary to the aforesaid Regulation and accordingly directed the

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respondents in the application to grant certain monetary benefits to the legal representatives of late Satya Prakash and also directed the respondents to consider if it is possible and permissible to offer an appointment on compassionate ground. It is the correctness or otherwise of the order which is the subject matter of this Writ Petition.

5. Learned counsel appearing for the State would contend that the Tribunal was not justified in coming to the conclusion that once an enquiry was initiated by issuing the charge memo, the respondents could not have invoked the provisions of Regulation-59 of the Regulations and, therefore, the impugned order passed by the Tribunal is contrary to Regulation-59 of the Regulations and also contrary to the well established legal principles.

6. *Per contra*, learned counsel appearing for the respondents in the Writ Petition justifies the impugned order passed by the Tribunal.

7. The admitted facts are, that late Satya Prakash was appointed as Police Constable on probation in the month of May 1984. He was assigned certain duties by the authorities. Being of the opinion that he failed to discharge the functions assigned to him, they had initiated proceedings by issuing a charge memo. After receipt of the charge memo, the delinquent employee had filed reply, The Disciplinary Authority, without concluding the proceedings so initiated, had thought it fit to take an easy course to dispense with the services of late Satya Prakash. For that purpose, the Disciplinary Authority had invoked Regulation-59 of the Regulations. The Tribunal in its order has made reference to the impugned order passed by the Superintendent of Police. The petitioners/State while filing this Writ Petition, for the reasons best known to them, have not even produced the order passed by the

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Superintendent of Police in exercise of his powers under Regulation-59 of the Regulations. Therefore, we have to go by whatever the Tribunal has said in its order.

8. The Tribunal while allowing the application filed by the applicant has stated as under:

> "In fact the order of discharge has been issued under Regulation 59 which pertains to the period of probation of a recruit and which prescribes a period of two years for new recruits and provides that the service of a recruit may be dispensed with during the probationary period if in the opinion of the Superintendent he is unlikely to become a satisfactory Police Officer. In the present case, however, the deceased applicants' discharge was quite clearly for a specific fault for which he had been issued a charge sheet. Therefore, even though the order of discharge does not mention the specific fault and only innocuously mentions that services are not required the discharge of the deceased applicant during the period of probation has to be held to be removal or dismissal within the meaning of Police Regulation 240."

9. Even otherwise also, Regulation 59 of the Regulations authorizes the employee to discharge the services of the probationer under certain circumstances. The Regulation is in two parts; the first limb of the Regulation states that every recruitee will be on probation for a period of two years which may be in two periods of 6 months each, if the Superintendent of Police considers it desirable and the second portion of the Regulation authorizes the Superintendent of Police to dispense with the services of probationer if he is of the opinion that the recruitee is unlikely to become a satisfactory Police Officer. That only means that after subjective and objective satisfaction, the Superintendent of Police has to make up his mind and form an opinion about the capacity and capability of a recruitee whether he can become a satisfactory Police Officer. If he is of the opinion that the recruittee may not become a

satisfactory Police Officer then he can certainly discharge or dispense with the services of the recruittee during the probationary period.

10. In the instant case, the Tribunal in its order had observed that nowhere in the order passed by the Superintendent of Police he has stated that the recruittee concerned is unlikely to become a satisfactory Police Officer. Regulations that are framed are statutory Regulations and they are required to be followed by the authorities. The Regulation categorically states that it is only after an opinion is formed by the Superintendent of Police that the recruittee is unlikely to become a satisfactory police officer, the provisions of Regulation 59 could be invoked by him to dispense with the services of a recruittee.

12. In view of the above, we are of the opinion that the Tribunal correctly understanding the purport of Regulation-59 of the Regulations has granted certain reliefs to the legal representatives of late Satya Prakash. In our opinion, the findings recorded by the Tribunal cannot be characterized either as arbitrary, capricious, illegal or contrary to the statutory Regulation and also contrary to the well established legally principles.

13. In that view of the matter, interference of the impugned order passed by the Tribunal is not called for. Accordingly, the petition requires to be rejected and it is rejected. Ordered accordingly.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge